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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 404

FREDERICK J. VILLAFRANCA and THELMA K. VILLAFRANCA, Husband and Wife, - - - - - - - - Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE, - - - - - - - - Respondent.

PETITION FOR REHEARING ON PETITION FOR CERTIORARI.

IRWIN G. WATERMAN,
600 Marion E. Taylor Building,
Louisville, Kentucky,

GORDON DAVIDSON,
300 Marion E. Taylor Building,
Louisville, Kentucky,
Counsel for Petitioners.

Of Counsel:
MORRIS, GARLOVE, WATERMAN & JOHNSON,
Louisville, Kentucky.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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FREDERICK J. VILLAFRANCA and
THELMA K. VILLAFRANCA, Husband
and Wife, - - - - - - *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, - *Respondent.*

PETITION FOR REHEARING ON PETITION FOR CERTIORARI.

Petitioners are reliably informed that the taxpayer in Michael V. Lawless v. Commissioner of Internal Revenue, T.C. Memo 1966-12, 25 TCM 49,[1] has filed a petition for review to United States Court of Appeals for the Ninth Circuit for review of an adverse decision of the Tax Court in a case involving, among other issues, the right of a cash basis dance studio to deduct estimated future expenses of $2.50 per hour under prepaid dance instruction contracts for untaught lessons at the end of the taxable year. The Tax Court therein relied on the same authorities as it did in the instant case but did not mention its decision herein.

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[1]Tax Court Docket Nos. 92017, 1455-64 and 94364-94366.

The taxpayer in the instant case accrued as a deduction its obligations to its students for prepaid hours of instruction remaining untaught at the end of the accounting year. These obligations were measured by the minimum teaching expense of $2.00 per hour for each such untaught lesson.

Inasmuch as the Ninth Circuit may reach a result in the similar case before it which differs from the decision of the Sixth Circuit herein, it is respectfully requested that final action in the instant case be withheld and the petitioners' rights be preserved until it may be determined if a conflict shall occur in the Courts of Appeal on this issue.

It is believed that issues as to the continued viability of the all events test for accrual of deductions, the need for a decision on accrual of deductions to complement accrual of income decisions of this Court and an exploration of the limits of the Commissioner's power to require changes in tax accounting systems are all of sufficient importance to merit this Court's attention.

Respectfully submitted,

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Counsel for Petitioner.

Of Counsel:

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CERTIFICATE.

The undersigned counsel for taxpayers hereby certifies that this petition for rehearing on the Petition for Certiorari is not filed for purposes of delay and states that the petitioners' full tax liability claimed by the respondent has been fully paid after the decision of the Court of Appeals herein and upon levy and threat of execution thereon. It is further certified that the petition is restricted to the grounds urged in 54-55.

Of Counsel for Petitioners.

END